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No. 91

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1941

CHARLES R. FISCHER, Commissioner of Insurance of
the State of Iowa, as Receiver for the American Life
Insurance Company,

Petitioner,

v.

AMERICAN UNITED LIFE INSURANCE COMPANY,
JOHN G. EMERY, Commissioner of Insurance of the
State of Michigan, as Permanent Liquidating Receiver
of the American Life Insurance Company of Detroit,
Michigan, and DAN E. LYDICK, Receiver of the Amer-
ican Life Insurance Company of Detroit, Michigan,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF OF RESPONDENT
AMERICAN UNITED LIFE INSURANCE COMPANY

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United Life Insurance Company,*

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INDEX

	PAGE
The Opinions Below	1
Jurisdiction	2
Supplementary Statement of Case	2
Summary of Argument	6

I

THE DISTRIBUTION OF ASSETS OF AN INSOLVENT INSURANCE COMPANY, IN THE ABSENCE OF DEFINITE DIRECTION TO THE CONTRARY, MUST BE ON THE BASIS OF ABSOLUTE EQUALITY.

The doctrine of "Equality is Equity" controls the statutory liquidation of life insurance companies subject only to clear and explicit statements granting priority to liens..... 6

II

THE DOMICILIARY COURT WHICH FIRST ACQUIRES JURISDICTION OF THE ASSETS OF AN INSOLVENT INSURANCE COMPANY HAS JURISDICTION OF LIQUIDATION.

Title to all assets of an insolvent life insurance company in a statutory liquidator places exclusive jurisdiction in such liquidator to carry out the liquidation of assets..... 6

III

PAGE

IOWA POLICYHOLDERS HAVE ACCEPTED THE JURISDICTION OF THE MICHIGAN RECEIVER AND NO DUTY OR OBLIGATION OF THE IOWA RECEIVER TO THE IOWA POLICYHOLDERS EXISTS, BY WHICH HE MUST ADMINISTER FOR THE BENEFIT OF IOWA POLICYHOLDERS, ASSETS IN HIS POSSESSION, TITLE TO WHICH IS VESTED IN THE MICHIGAN RECEIVER.

All Iowa policyholders have accepted the jurisdiction of the Michigan Court. In the absence of judgment or execution creditors, there are no persons for whom Petitioner is authorized to speak. In the absence of a showing of local policy granting an exception to the rule of equality, no jurisdiction for the distribution of part of the assets of the Michigan insolvent company existed

7

IV

THE IOWA FEDERAL COURT WAS WITHOUT JURISDICTION TO INTERFERE WITH THE ECONOMICAL, EFFICIENT AND ORDERLY LIQUIDATION OF A MICHIGAN INSURANCE COMPANY BY A MICHIGAN COURT.

There is no local policy in the State of Iowa by which the doctrine of equitable distribution of assets of an insolvent is subject to a preference....

8

	PAGE
Argument	9
Introduction	9
I. THE DISTRIBUTION OF ASSETS OF AN INSOLVENT INSURANCE COMPANY IN THE ABSENCE OF DEFINITE DIRECTION TO THE CONTRARY MUST BE UPON THE BASIS OF ABSOLUTE EQUALITY	10
II. THE DOMICILIARY COURT WHICH FIRST ACQUIRES JURISDICTION OF AN INSOLVENT INSURANCE COM- PANY HAS JURISDICTION OF LIQUIDATION.....	13
III. IOWA POLICYHOLDERS HAVE ACCEPTED THE JURIS- DICTION OF THE MICHIGAN RECEIVER AND NO DUTY OR OBLIGATION OF THE IOWA RECEIVER TO THE IOWA POLICYHOLDERS EXISTS BY WHICH HE MUST ADMINISTER FOR THE BENEFIT OF IOWA POLICY- HOLDERS ASSETS IN HIS POSSESSION, TITLE TO WHICH IS VESTED IN THE MICHIGAN RECEIVER....	22
IV. THE IOWA FEDERAL COURT WAS WITHOUT JURIS- DICTION TO INTERFERE WITH THE ECONOMICAL, EFFICIENT AND ORDERLY LIQUIDATION OF AN IN- SOLVENT MICHIGAN INSURANCE COMPANY BY A MICHIGAN COURT	33
Conclusion	37

TABLE OF AUTHORITIES

STATUTES

	PAGE
Section 240 (a) Judicial Code (43 Statutes 938, 28 U. S. C. A. 347)	2
Iowa Statutes:	
Sections 8654-55	20
Section 8663	22
Michigan:	
Compiled laws of Michigan 1929, Section 12266.....	16

CASES CITED

B.

Blake v. McClung, 172 U. S. 239, 43 L. Ed. 432.....	19
---	----

C.

Carr v. Hamilton, 129 U. S. 252-256, 32 L. Ed. 669, 670	11, 29
Clark v. Williard, 292 U. S. 112, 123, 54 S. Ct. 615, 620, 78 L. Ed. 1160	13, 33, 34, 35
Clark v. Williard, 294 U. S. 211, 79 L. Ed. 865.....	13, 34

F.

Fry v. Charter Oak Life Insurance Company, 31 Fed. 197	14
--	----

H.

Hobbs v. Occidental Life Ins. Co., 87 Fed. (2d) 380	26
---	----

L.

Lion Bonding and Surety Co. v. Karatz, 262 U. S. 77, 67 L. Ed. 871	15
---	----

M.

Motlow v. Southern Holding & Securities Corp., (8 Cir.) 95 F. (2d) 721, 725	12
--	----

R.

Relfe v. Rundle, 103 U. S. 222, 26 L. Ed. 337.....	13, 15, 36
--	------------

S.

*Shloss v. Metropolitan Surety Company, 149 Iowa 382, 128 N. W. 384	35
--	----

U.

United States v. Knott, 298 U. S. 544, 80 L. Ed. 1321.....	11, 12
--	--------

ABBREVIATIONS

For convenience the following abbreviations will be used by the Respondent in this brief:

American United	American United Life Insurance Company of Indianapolis, Indiana
Des Moines Policyholders	Policyholders of the American Life Insurance Company of Des Moines holding policies issued by the Company prior to July 30, 1921.
Iowa Company	American Life Insurance Company of Des Moines, Iowa
Iowa Deposit	Deposit of Michigan Company with Commissioner of Insurance of Iowa
Iowa Receiver	Charles R. Fischer, Commissioner of Insurance of the State of Iowa, as Receiver for the American Life Insurance Company in Iowa
Michigan Company	American Life Insurance Company of Detroit, Michigan
Permanent Liquidating Receiver	John G. Emery, Commissioner of Insurance of the State of Michigan, as Permanent Liquidating Receiver of the American Life Insurance Company of Detroit, Michigan
Petitioner	Charles R. Fischer, Commissioner of Insurance of Iowa, as Receiver for the American Life Insurance Company in Iowa

Texas Receiver	Dan E. Lydick, Receiver of the American Life Insurance Company of Detroit, Michigan, in Texas
Reinsurance Agreement	Contract of Reinsurance between John G. Emery, Commissioner of Insurance of Michigan, as Permanent Liquidating Receiver of the American Life Insurance Company and American United Life Insurance Company of Indianapolis, Indiana, of November 17, 1939
Respondents	American United Life Insurance Company, John G. Emery, Commissioner of Insurance of Michigan, as Permanent Liquidating Receiver of the American Life Insurance Company, and Dan E. Lydick, Texas Receiver of the American Life Insurance Company
R.	Printed transcript of the Record



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pany of Detroit, Michigan, and DAN E. LYDICK,
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pany of Detroit, Michigan,

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No. 91

BRIEF OF RESPONDENT

AMERICAN UNITED LIFE INSURANCE COMPANY

THE OPINIONS BELOW

The opinion of the District Court for the Southern
District of Iowa is unreported (R. 435-450). The opinion
of the Circuit Court of Appeals for the Eighth Circuit,

which reversed the lower court, is reported in 117 Fed. (2d) 811 (R. 487-508). A decree remanding the case to the District Court with directions to order a decree of dismissal for want of jurisdiction was entered by the Circuit Court of Appeals on February 24, 1941 (R. 508-509). A Petition for Writ of Certiorari was filed May 20, 1941, and was granted by this Court on October 13, 1941. (——— U. S. ——.)

JURISDICTION

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (43 Statutes 938, 28 U. S. C. A. Sec. 347).

SUPPLEMENTAL STATEMENT OF THE CASE

The Respondent, American United Life Insurance Company, herein known as the American United, adopts the Supplementary Statement of Case found in the brief of Respondent John G. Emery, as Permanent Liquidating Receiver, and in addition states that the particular interest herein of Respondent, American United, grows out of the management contract of reinsurance entered into between the Respondent, John G. Emery, Commissioner of Insurance of the State of Michigan, as Permanent Liquidating Receiver of the American Life Insurance Company of Detroit, Michigan, herein known as Permanent Liquidating Receiver, and the American United, under date of November 17, 1939 (R. 314-340).

On complaint filed April 12, 1938, by the Commissioner of Insurance of Michigan in the Circuit Court for the County of Ingham, Michigan, an order appointing a tem-

porary Receiver was entered on the 7th day of June, 1938, by which the American Life Insurance Company of Detroit, Michigan, herein known as the Michigan Company, was held to be insolvent and all property and assets of every nature, wherever situated, held, owned or controlled by the Michigan Company were placed under the control of the temporary Receiver, and all creditors, stockholders and other persons were enjoined from instituting or prosecuting suits at law or equity against the Michigan Company and from levying any attachments, executions or other processes upon or against any of the properties of the Michigan Company or from taking or attempting to take into their possession or to exercise any control over the property and assets, or any part thereof, of the Michigan Company, the appointing Court reserving full and complete jurisdiction of the cause (R. 282-285). Thereafter the Respondent Emery, as successor in office to Insurance Commissioner Charles E. Gauss, was duly appointed by an order made and entered September 16, 1939, as statutory Permanent Liquidating Receiver of the Michigan Company, and was vested with title to all property, assets and business of said Michigan Company wherever situated and authorized to reinsure all or part of the policies and annuity contracts in force April 12, 1938; all injunctions theretofore issued were affirmed and continued in force and effect and all orders theretofore issued vesting all title in the Permanent Liquidating Receiver were affirmed as of the date of their issuance and continued in full force and effect except as modified, until further order. And it was further ordered that the dissolution of the American Life Insurance Company be decreed to be effective as of the 7th day of June, 1938 (R. 285-290).

The American United and the Permanent Liquidating Receiver on the 17th day of November, 1939, entered into a management contract of reinsurance of all valid outstanding policy obligations and liabilities of the Michigan Company in force on April 12, 1938, and the Receiver agreed to convey and has conveyed all the assets of the Michigan Company (with exceptions of no consequence herein) to the American United (R. 314-340). The reinsurance agreement was approved by the Court having jurisdiction on November 17, 1939 (R. 313-314), and by the Insurance Commissioner of Indiana November 18, 1939 (R. 341).

In recognition of the controversy existing between the statutory Permanent Liquidating Receiver and the Insurance Commissioner of the State of Iowa, herein sometimes known as the Iowa Receiver, as to the rights of certain policyholders in securities theretofore deposited with the Iowa Insurance Commissioner by the Michigan Company, herein known as the Iowa Deposit, the American United, as a part of the reinsurance contract, agreed that at the termination of the controversy by litigation or otherwise, the Permanent Liquidating Receiver should apply to the Michigan Court for instructions in order to treat the Des Moines group in a manner consistent with the finding of the Court in which such controversy was litigated (R. 338-340).

Immediately after the approval of the Reinsurance Agreement a Certificate of Assumption by the American United of all outstanding policies was transmitted to all policyholders of the Michigan Company (R. 313). All policyholders of the Michigan Company, including those policyholders to whom had been issued policies of the American Life Insurance Company of Des Moines, Iowa,

prior to July 30, 1921, except eighty-one thereof, accepted the provisions of the reinsurance agreement and assumption certificate of the American United (R. 199). The eighty-one dissenting policyholders have all filed claims with the Permanent Liquidating Receiver of the Michigan Company for submission to the Michigan Court (R. 199). The American United has thereafter been operating and managing the business of the Michigan Company and in connection therewith has collected premiums and has had possession of all of the policy records and all of the assets and documents of the Michigan Company other than those retained by the Iowa Receiver (R. 201).

Counsel for the Respondent, American United, particularly points out and emphasizes the unwarranted and misleading attempt of counsel for Petitioner, in the statement of the case and in argument to make it appear that the original contracts of reinsurance of the Iowa Company, as executed in 1921, 1922 and 1923 by the Michigan Company, were in the form set out by counsel for Petitioner on page 4 and page 42 of his brief. The first paragraph of the alleged quotation in each instance is printed as if in the contracts it immediately preceded and introduced Sections 5 and 6 thereof, whereas in truth the opening paragraph of the quotation on both pages was actually a part of Section 1 of the contracts in question, and had no direct connection whatever with Sections 5 and 6 of the contracts reinsuring the Iowa Company. (R. 205, 210, 216.)

SUMMARY OF ARGUMENT

I

THE DISTRIBUTION OF ASSETS OF AN INSOLVENT INSURANCE COMPANY, IN THE ABSENCE OF DEFINITE DIRECTION TO THE CONTRARY, MUST BE ON THE BASIS OF ABSOLUTE EQUALITY.

The doctrine of "equality is equity" particularly applies to the statutory liquidation of life insurance companies and in the absence of very definite direction of distribution upon the basis of preferential treatment of certain creditors, equality must be accepted as the sole basis of distribution. Only judgment creditors, attachment creditors, or those in whom a definite lien is vested by clear and explicit provision of law are given priority over policyholders and general creditors.

II

THE DOMICILIARY COURT WHICH FIRST ACQUIRES JURISDICTION OF THE ASSETS OF AN INSOLVENT INSURANCE COMPANY HAS JURISDICTION OF LIQUIDATION.

When by force of the Michigan statute title to all assets of an insolvent insurance company passed to the statutory liquidator, his exclusive jurisdiction in carrying out an economical, efficient and orderly liquidation of assets and the business of the insolvent company was not subject to attack by other courts.

III

IOWA POLICYHOLDERS HAVE ACCEPTED THE JURISDICTION OF THE MICHIGAN COURT AND NO DUTY OR OBLIGATION OF THE IOWA RECEIVER TO THE IOWA POLICYHOLDERS EXISTS, BY WHICH HE MUST ADMINISTER FOR THE BENEFIT OF IOWA POLICYHOLDERS, ASSETS IN HIS POSSESSION, TITLE TO WHICH IS VESTED IN THE MICHIGAN RECEIVER.

Petitioner seeks to speak only for policyholders of the Iowa Company reinsured by the Michigan Company in 1921. The Iowa Company was dissolved by decree when all of its policyholders were reinsured by the Michigan Company which

- (a) Issued its certificate of assumption to the Iowa policyholders,
- (b) Received all assets of the Iowa Company representing reserves on the Iowa business,
- (c) Administered the assets as the sole property of the Michigan Company, and
- (d) Collected premiums and otherwise recognized its sole liability on the Iowa policies.

The Michigan Company was dissolved when the statutory receiver was appointed who reinsured all policies in the American United, which

- (a) Issued its certificate of assumption to all of the policyholders of the Michigan Company, including those originally insured in the Iowa Company, all but 81 of whom accepted the terms of the reinsurance agreement and those 81 accepted the jurisdiction of the Michigan Court by filing claims with the Michigan Receiver,

- (b) Received assets of the Michigan Company, administered the business pursuant to the terms of the reinsurance agreement, received premiums from all policyholders, including those originally in the Iowa Company and generally recognized liability under the contract, of all policies of the Michigan Company.

No judgment, attachment or execution lien in Iowa or elsewhere runs to any of the Iowa policyholders, all of whom have accepted the obligation of the Michigan Company, the jurisdiction of the Michigan Court, and the contractual liability of the Indiana Company.

IV

THE IOWA FEDERAL COURT WAS WITHOUT JURISDICTION TO INTERFERE WITH THE ECONOMICAL, EFFICIENT AND ORDERLY LIQUIDATION OF A MICHIGAN INSURANCE COMPANY BY A MICHIGAN COURT.

Jurisdiction having been established in the Michigan court for the liquidation of the assets of an insolvent Michigan insurance company, with the cooperation of foreign receivers, ancillary or otherwise, no jurisdiction existed in the Federal Court of Iowa to authorize liquidation of a portion of the assets, title to which was in the Michigan Receiver, by the Iowa Receiver who had mere possession of certain assets, and who was appointed subsequent to the original suit for the appointment of the Michigan Receiver.

ARGUMENT

INTRODUCTION

Separate briefs are being filed by each of the Respondents and the Respondent, American United Life Insurance Company, to avoid repetition, adopts the arguments of each of the other Respondents, repeating only insofar as it seems necessary in order to develop the theory with which this Respondent as reinsurer of the insurance business of the Michigan Company is particularly concerned. It is necessary, therefore, to consider the title to assets of the Michigan company and also the effect upon the policyholders of the Michigan Company, including those originally insured in the Iowa Company, of the Reinsurance Agreement entered into by the American United with the Permanent Liquidating Receiver.

The contention of the American United is that the Court of primary jurisdiction in Michigan, by which the domiciliary receiver as statutory liquidator of the insolvent Michigan Company was appointed, at all times had jurisdiction of the insolvent company and also that the statutory liquidator, appointed by and serving under that court as statutory successor to the insolvent company, had title to all of the assets of the insolvent Michigan Company, including the Iowa deposit held in the possession or custody of Petitioner. It is recognized, however, that other receivers, ancillary and otherwise, may have certain power within the jurisdictional limits of their respective appointing authorities, particularly to prevent any discrimination against local creditors. No controversy exists between the

Texas Receiver and either the American United or the Michigan Receiver as to the distribution of assets and their use in the purchase of reinsurance by the Permanent Liquidating Receiver as set out in the Reinsurance Agreement.

The Circuit Court of Appeals held that by reason of the superior jurisdiction of the Michigan Court over the assets of the Michigan Company, including the Iowa deposit, and the power in that court to enforce a comprehensive plan as provided by Michigan law for the winding up of an insolvent insurance company, no jurisdiction of the subject matter existed in the Federal Court of Iowa. If jurisdiction may be found to exist in the Federal Court of Iowa for any purpose it is the contention of the Respondent, American United, that this court may direct the Iowa Federal Court in such action as will, by giving full faith and credit to the acts of the Michigan Court, establish the solidity and unification of the rules relative to distribution of assets of an insolvent insurance company and a recognition of the power of the Court of the Domiciliary Receiver as the single tribunal wherein the rights of all concerned may be determined in an efficient, economical and orderly administration of an insolvent company.

I

THE DISTRIBUTION OF ASSETS OF AN INSOLVENT INSURANCE COMPANY IN THE ABSENCE OF DEFINITE DIRECTION TO THE CONTRARY MUST BE UPON THE BASIS OF ABSOLUTE EQUALITY.

The rule has long been established and recognized without exception that upon the insolvency of a life insurance company the business of the company is brought to an immediate and absolute end and the policyholders become

entitled to receive an amount equal to the equitable value of their respective policies and are entitled to participate pro rata in the assets of the insolvent company.

Carr v. Hamilton, 129 U. S. 252, 256; 32 L. Ed. 669, 670.

The rule thus announced in one of the early cases growing out of the insolvency of the Life Association of America has been supported by the authority of numerous cases thereafter.

The effect of insolvency of an insurance company was considered by this Court in *United States v. Knott*, 298 U. S. 544; 80 L. Ed. 132. A New Jersey surety company had made a statutory deposit in the state of Florida in order to qualify as a foreign corporation. The question before the court was the priority of a claim of the United States over local creditors who also sought priority. The Supreme Court of Florida had held that the deposit constituted a trust fund for the benefit of Florida, its political subdivisions, citizens and residents and that they were entitled to be paid first out of it. Although the question of priority of the United States was involved in statutes not pertinent to this inquiry the language of the court in considering the character of the deposit effectively applies to the situation of the Iowa deposit in the instant case:

“Obviously, the deposit did not divest the company’s title to the securities. No one was appointed trustee; and, at the time of the deposit, there was no ascertainable beneficiary. Who would share in the proceeds of the securities could not be known until they were exhausted in satisfaction of judgments, or until the entry of the decree of distribution in a suit authorized by the 1933 amendment. While in the case at bar the Supreme Court declared that the deposit created ‘a trust fund,’ the term appears to

have been used to connote an inchoate general lien for the benefit of those persons who may become entitled to be paid from the proceeds, either as unsatisfied judgment creditors, or as Florida creditors at the time when insolvency supervenes. Such an interest lacks the characteristics of a specific perfected lien which alone bars the priority of the United States."

United States v. Knott, 298 U. S. 544, 550;
80 L. Ed. 1321, 1327.

As will be shown hereinafter, title to all of the assets of the Michigan Company (including the Iowa deposit) was vested in that company and upon insolvency became subject to distribution or use in purchasing reinsurance by the liquidator. Unless by definite expression of reasonable clarity priority is granted to judgment or attachment creditors, the doctrine of equality applies to the liquidation of an insolvent corporation and as expressed by the Circuit Court in the opinion of that Court, quoting from *Motlow v. Southern Holding & Securities Corp.* (8 Cir.), 95 F. (2d) 721, 725; (Cert. den. 305 U. S. 609):

"This should be particularly true as to proceedings for the liquidation of insolvent insurance companies, for the reasons adverted to by Mr. Justice Cardozo in *Clark v. Williard*, 292 U. S. 112, 123, 54 S. Ct. 615, 620, 78 L. Ed. 1160. See, also, *Glenn on Liquidation*, pages 409, 410, Secs. 278, 279, 280."

The American United agrees that the decision of the Circuit Court correctly stated the law, both by original statement and by reference to other cases of this Court and inferior Federal Courts as to equality of treatment of creditors in liquidation. The doctrine of equality has been recognized and thoroughly established by this Court, par-

ticularly, in *Relfe v. Kundle*, 103 U. S. 222, and this Respondent adopts the discussion of that case and the numerous other cases growing out of and related to that decision found in the brief of Respondent Emery.

The theory that equality is equity being established, the question here involved is whether local policy of the State of Iowa, as established under the circumstances outlined in *Clark v. Willard*, 292 U. S. 112; 294 U. S. 211, requires a withdrawal from the theory of absolute equality in the instant case.

II

THE DOMICILIARY COURT WHICH FIRST ACQUIRES JURISDICTION OF AN INSOLVENT INSURANCE COMPANY HAS JURISDICTION OF LIQUIDATION.

The Michigan Court acquired jurisdiction of the business of the Michigan Company when, on April 12, 1938, in accordance with the requirements of the Michigan statutes on liquidation of insolvent insurance companies, the Commissioner of Insurance filed his complaint alleging insolvency of the Michigan Company and praying for the appointment of a receiver and the dissolution of the Company or the reinsurance of its business (R. 195). As stated by the Circuit Court of Appeals:

“The Michigan Court, on April 12, 1938, acquired jurisdiction over all of the property and business in the actual and constructive possession of the Michigan Company, and the exclusive right to determine all controversies respecting such property and business, since no other court had then taken possession of any of the assets of the Company.” (R. 498.)

The effect of such a proceeding, brought under a particular statute applicable only to impaired insurance companies, has been stated as follows:

“In that class of cases it is the rule that the filing of the complaint by the state operates as a sequestration of the corporate property, for the purposes contemplated by the statute under which the proceeding is brought, from the filing of the complaint, and not merely from the entry of a final decree.”

Fry v. Charter Oak Life Insurance Company, 31 Fed. 197, 200.

Not until May 29, 1938 was the receivership action filed in Texas (R. 196) and the petition under which the Petitioner was appointed in Iowa was not filed until June 17, 1938 (R. 198). The dissolution of the Michigan Company was decreed “as of the 7th day of June A. D. 1938, for the purpose of the liquidation and dissolution provisions” of the Michigan law (R. 289). The effect of the orders entered was to transfer, as of April 12, 1938 all assets “wherever situated, held, owned or controlled by the defendant company” to the jurisdiction of the court from the insolvent company which was soon thereafter dissolved. (R. 283, 286, 288, 289.)

The fundamental doctrine that the laws of the domiciliary state of a life insurance company are a part of its charter and bind its policyholders is too well established to require the further citation of extensive authority. Policyholders must accept the laws of the state of the company as part of their contracts, including statutory provisions for liquidation. Numerous decisions are discussed at length in the brief of Respondent Emery and that portion of his brief is adopted by reference. As expressed succinctly in *Relfe v. Rundle*:

“Every corporation necessarily carries its charter wherever it goes, for that is the law of its existence. It may be restricted in the use of some of its powers while doing business away from its corporate home, but every person who deals with it everywhere is bound to take notice of the provisions which have been made in its charter for the management and control of its affairs both in life and after dissolution.”

Relfe v. Rundle, 103 U. S. 222; 26 L. Ed. 337.

The Michigan Court was a court of appropriate jurisdiction and when suit was filed the title of the assets of the insolvent company was then vested in that court as has been held in *Lion Bonding and Surety Co. v. Karatz*:

“Where a court of competent jurisdiction has, by appropriate proceedings, taken property into its possession through its officers, the property is thereby withdrawn from the jurisdiction of all other courts. (Citing cases.) Possession of the res disables other courts of coordinate jurisdiction from exercising any power over it. (Citing cases.) The court which first acquired jurisdiction through possession of the property is vested, while it holds possession, with the power to hear and determine all controversies relating thereto. It has the right, while continuing to exercise its prior jurisdiction, to determine for itself how far it will permit any other court to interfere with such possession and jurisdiction. (Citing cases.)”

Lion Bonding and Surety Co. v. Karatz, 262 U. S. 77, 78; 67 L. Ed. 871, 880.

By the act of a court of proper jurisdiction and in conformity with the provisions of law, the Michigan Company was found insolvent and a Receiver was appointed of the Company “and all and singular the property and assets of

every nature wherever situated, held, owned or controlled by the defendant Company" (R. 283). Thereafter, by the order of appointment of the Permanent Liquidating Receiver the Court specifically ordered and decreed that by virtue of Section 12236, Compiled Laws of Michigan for 1929, the Permanent Liquidating Receiver was vested with title to all property, assets and business of the Company wherever situated, and was authorized to reinsure and fix liens upon all of the policies in force on April 12, 1938; all orders made since April 12, 1938, were affirmed and continued and the Michigan Company was further decreed to be dissolved as of the 7th day of June, 1938 (R. 285-290).

It, therefore, appears from the order of appointment that following the filing of a Bill of Complaint pursuant to law by the then Commissioner of the State of Michigan on April 12, 1938, jurisdiction over all assets was vested in the Court. In the same manner as he took possession of all assets, the receiver so appointed represented all policyholders and creditors of the insolvent insurance company. The administration of the res included claims, liens, preferences or priorities, all of which the Court, with such broad equitable powers, must be trusted fairly to enforce, whether arising from Michigan, Iowa or any other State.

To determine whether the assets involved in the Iowa deposit properly were included among the assets title to which vested first in the Michigan Company and thereafter in the Court and the liquidator as the statutory successor of the insolvent Michigan Company, it is necessary to look at the original contracts of reinsurance by which the Iowa Company reinsured its business with the Michigan Company (R. 204-218). By those contracts all of the life insurance business of the Iowa Company was transferred and

assigned to the Michigan Company which covenanted and agreed to issue to the holders of the policies its independent Certificate of Assumption as of July 30, 1921 (R. 205), and the Iowa Company agreed to sell, transfer, assign and convey to the Michigan Company all of the assets and property of the Iowa Company, of every kind and nature owned or possessed by the Iowa Company, wherever situated, as of July 30, 1921, except an amount equal to capital and surplus (R. 206). By the last of the three reinsurance agreements executed in order to pass title to all of the subsequently written insurance of the Iowa Company, it was specifically stated in Section 6 thereof "that the securities now on deposit in the Insurance Department of Iowa to credit account American Life Insurance Company, Des Moines, Iowa shall be transferred to the account of American Life Insurance Company, Detroit, Michigan" (R. 218).

There is no requirement of Iowa law by which the title to the securities thereafter on deposit with the Insurance Commissioner of the State of Iowa was ever vested in such Commissioner, who held mere physical custody and possession of instruments evidencing the ownership by the Michigan Company of mortgages, contracts, etc. No notice was ever given the policyholders of the Michigan Company that the assets in the Iowa deposit were restricted to the benefit of but part of the policyholders either directly or from the annual statements filed with Insurance Departments, including that of Iowa (R. 247-277).

There was no assignment or other evidence of transfer of title of the Iowa Deposit to the Iowa Commissioner. As required by law, annual reports of the business and affairs of the Michigan Company were made and in every report from 1921 through 1936, the deposit with the Commissioner of Insurance of Iowa was set forth without restriction, con-

dition or qualification as the sole property of the Michigan Company for the benefit of all policyholders of the Michigan Company (Exhibits G2 to G17, R. 247-277). In 1937, when in the course of the examination immediately preceding the insolvency of the Michigan Company, endorsement on the 1937 annual report for the first time stated that the securities deposited with the Iowa Commissioner were "for the benefit of policyholders to secure policies issued by American Life Insurance Company of Des Moines, Iowa and reinsured by American Life Insurance Company of Detroit, Michigan" (R. 245). But even at that time, sixteen years after the contracts were originally entered into by which business of the Iowa Company was reinsured, no suggestion was made in the statement that *title* to the mortgages mentioned was in the Commissioner of Insurance of Iowa or otherwise than in the Michigan Company.

No provision appears in the laws of Iowa by which there was any authority of law or requirement of statute for the continuance of the deposit originally established by the Iowa Company with the Commissioner of Insurance as a domestic corporation after the Iowa Company was reinsured in 1921 by the Michigan Company. The reasons which actuated the contracting parties in 1921 to state in the reinsurance agreements that there would be continued deposits with the Commissioner of Insurance "as would have been required of said American Life Insurance Company of Des Moines, Iowa, under the laws of said State of Iowa" (R. 207, 211, 217) cannot now be made clear. For reasons unknown at this time and not disclosed by any legal requirement of Iowa, that part of the assets of the Michigan Company received from the Iowa Company continued to be maintained in Iowa as provided by the contract

of reinsurance "*as would have been required*" if the Iowa Company had continued its independent existence as a domestic company in Iowa. But the Michigan Company was never a domestic company in Iowa and the Iowa Company was soon dissolved after the reinsurance was consummated. It does not appear, however, that there is anything in the Iowa law or in the reinsurance agreements originally executed between the Iowa Company and the Michigan Company by which any restriction upon title to the assets in question existed. The assets passed to the Michigan Company. There is now no basis for claiming that the actual securities in question did not at all times belong to the Michigan Company and hence they were not subject to the Iowa law concerning domestic companies and domestic company deposits. Such being the fact, upon a finding of insolvency of the Michigan Company title to all of the assets, wherever situated, passed to the jurisdiction of the Court. This is a special statutory receivership and liquidation and cannot be tested by the usual rules as apply to the ordinary equity receivership with reference to jurisdiction and powers.

In some instances, by the statute requiring a deposit it may be provided that in case of insolvency, the fund deposited may be distributed to creditors and shareholders residing in the State wherein the deposit is made. Therefore, in such a case the application of the fund to the benefit of some creditors does not infringe upon the provision of the Federal Constitution that the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states.

Blake v. McClung, 172 U. S. 239; 43 L. Ed. 432.

A distinction necessarily must be noted between deposits based on reserves and deposits of a specific sum, frequently \$100,000 or more, which are made as a prerequisite or condition on a foreign company, generally not life insurance but casualty or surety companies, before being permitted to enter a state. Where such deposits are established, it is usually held that the amount thereof is to be made available to *creditors* within the state where the deposit is lodged, in the event that a judgment or other lien claim is not paid. Under the Michigan law a domestic stock company was required to have a deposit of \$200,000, originally of \$100,000 and later of \$200,000, as security for policyholders from which unpaid claims could be collected. However, upon insolvency, where proceedings were taken for dissolution, it was specifically provided that nothing should prevent "an equal and just distribution of all of its assets including the securities so deposited with the State Treasurer, among the persons equitably entitled thereto." (R. 279, 282.)

In the instant case the Iowa deposit was not made by reason of any provision of law as the deposit statutes in force in the State of Iowa specifically referred only to domestic companies. However, in contradistinction to the type of deposit to which reference has been made, usually set forth in round figures, the statutory deposit required of a domestic company was by the terms of the statute based upon the valuation of the policies in force (Sections 8654-8655; R. 219-220). The deposit, therefore, of the Iowa Company, while still a domestic corporation, represented only the reserve required for the policies in force, a variable amount depending solely from time to time upon the amount of insurance in force and with no ascertainable beneficiary. At the time when the Iowa company was re-

insured by the Michigan Company there were 17,412 policies of insurance in the total amount of over \$32,600,000 originally issued by the Iowa company and in force on September 1, 1921, of which 6,636 policies were on lives of residents of Iowa (R. 341).

At approximately the same date the statutory deposit with the Commissioner as required of the domestic company slightly exceeded \$2,930,000, the deposit being equal to the reserve of all policies then in force (R. 192).

At the date of the reinsurance of the Michigan Company by the American United in 1939, of the original 17,412 policyholders in the Iowa Company there were but 4,313 policyholders whose policies were still in force, with insurance in a total amount slightly exceeding \$6,650,000. They were distributed among 41 different states as well as Canada, Philippine Islands, Hawaii, Porto Rico and South America. Of them only 1,535 were residents of the state of Iowa (as compared with the original 6,636), representing insurance in force of \$2,456,039 (as compared with the original \$11,662,684.15) on the lives of Iowa citizens (R. 198, 341). At the time the Michigan Company became insolvent on April 12, 1938, the Iowa deposit totaled \$3,600,205.59 (R. 199). It will be seen, therefore, that the total insurance in force diminished in seventeen years from over thirty-two millions to approximately six and one-half millions. However, the deposit covering the reserve on insurance increased from \$2,930,840.71 in 1921 (R. 192) to \$3,600,205.59 in 1938 (R. 199) by reason of the increased value in each of the remaining policies. By reason of withdrawal and substitution, but \$30,000 of the original securities are still found in the Iowa deposit (R. 194).

The deposit, therefore, represents approximately a 20% increase in amount to cover approximately 20% of the original insurance, 80% of which is no longer in force for one reason or another. The Iowa deposit is not limited to the comparatively small amount of insurance still held by Iowa residents but represents the reserves on all business of the Iowa Company still in force.

Instead of remaining as an even sum the deposit has been subject to constant change as to amount, the reserve upon which it is based and the number of policies in force. Upon insolvency of an insurance company under the Iowa statute a deposit is subject to division among the holders of the policies "in the proportion of the last annual valuation of the same, or at any time be applied to the purchase of reinsurance for their benefit" (Sec. 8663; R. 221). Such a deposit is, therefore, very different from the type of deposit subject to the claims of lien holders. The constant stressing by petitioner of the existence of a lien might be in point as to other general types of deposits, but there is no more than an "inchoate lien" in the instant case, and the interest of the policyholders of the Michigan Company is not subject to determination.

III

IOWA POLICYHOLDERS HAVE ACCEPTED THE JURISDICTION OF THE MICHIGAN COURT AND NO DUTY OR OBLIGATION OF THE IOWA RECEIVER TO THE IOWA POLICYHOLDERS EXISTS BY WHICH HE MUST ADMINISTER FOR THE BENEFIT OF IOWA POLICYHOLDERS ASSETS IN HIS POSSESSION, TITLE TO WHICH IS VESTED IN THE MICHIGAN RECEIVER.

The contracts of reinsurance (R. 203-218) by which the Michigan Company reinsured the Iowa Company, by their terms stated that the Michigan Company assumed all lia-

bilities of the Iowa Company and all assets covering the reserve liability of the Iowa Company were transferred to the Michigan Company. Moreover, by the last of the several contracts of reinsurance by which the transfer of business was completed, the Michigan Company expressly agreed to issue to policyholders of the reinsured Iowa policies "its independent certificate of assumption as of December 30, 1922, to be attached to each such policy or contract reinsuring the same according and subject to the terms and conditions thereof" (R. 210).

Thereafter, each of the Iowa policyholders paid premiums to the Michigan Company, and after the execution of the third reinsurance agreement, the Iowa Company was dissolved and terminated as a corporate entity (R. 193).

By the reinsurance agreement of November 17, 1939, the American United reinsured and assumed all outstanding policy obligations of the Michigan Company in force by their terms on April 12, 1938 (R. 315). And in consideration of such assumption of liability, the Michigan Company transferred to the American United all of the assets of the Michigan Company of every kind, nature and description whatsoever, real, personal or mixed (R. 317).

Thereupon a Certificate of Assumption was duly issued by the American United and transmitted to each of the policyholders of the Michigan Company, including those originally insured in the Iowa Company, by which the individual policyholder was advised that the policy covered by such Certificate of Assumption had been assumed by the American United, subject to the terms and conditions thereof and of the reinsurance agreement (R. 313).

All of the living, remaining holders of policies issued by the Iowa Company accepted the terms of the American

United reinsurance agreement with the exception of eighty-one who have filed claims with the Permanent Liquidating Receiver to be submitted to the Michigan Court (R. 199). Those persons have by this act accepted the jurisdiction of the Michigan Court which is fully empowered to protect their interests and to assure them, without the intervention of petitioner, that their rights are adequately guarded. By their own act they have their "day in court." The policyholders of the Michigan Company have thereafter paid premiums to and fully recognized the American United as the successor of the Iowa Company and the Michigan Company. As a result of the original reinsurance the Iowa Company had ceased to exist and after the third of the three contracts of reinsurance the Iowa Company was dissolved and terminated as a corporate entity (R. 193). Its policyholders could not longer look to it and for more than 20 years have recognized the Michigan Company.

The Michigan Company has been held to be dissolved, effective as of the 7th day of June, 1938 (R. 289). Its policyholders, including the original Iowa policyholders, in the same manner, can no longer look to it, but look to the American United as their insurer.

Although the situation surrounding the complete reinsurance of all the policies of an insolvent life insurance company has arisen from time to time, few cases consider the situation of policyholders. The reinsurance of the Federal Reserve Life Insurance Company by the Occidental Life Insurance Company of California was carried out in substantially the same form as the matters involved in the instant case and came before the Circuit Court of Appeals for the Tenth Circuit. A copy of the reinsurance agreement had been submitted to all policyholders of the reinsured

company and practically all accepted the liability of the reinsuring company. Some few filed claims and elected to take the cash surrender value of their policies. Thereafter the reinsuring company then sought an order requiring the transfer to it of various notes, mortgages and other securities on deposit in Kansas, the home State of the reinsured company. In answer to that demand it was contended that it was necessary to retain the deposits in Kansas for the benefit of the Federal Reserve policies. But the Court held that the Occidental Life, the reinsurer, was entitled to have the securities delivered to it, pointing out that upon the adjudication of insolvency the policies of the old Federal Reserve were terminated as enforceable obligations and the holders became creditors, each for an amount equal to the then value of his policy with the right to participate, pro rata, in the assets of the receivership. This privilege of participating in the reserve was held to be the only right which the holders had until the reinsurance agreement became effective but as to the conditions thereafter, the Court said:

“* * * It is well settled that upon the adjudication of insolvency and the appointment of a receiver on May 22d, the policies of Federal Reserve were terminated as enforceable obligations for their respective face amounts, and the holders became creditors each for an amount equal to the then value of his policy with the right to participate pro rata in the assets in receivership. * * * The privilege of thus participating in such assets was the only right which the holders had from the adjudication of insolvency until the reinsurance agreement became effective.

“The effect of the reinsurance agreement was that with the assets in the hands of the receiver, holders of policies acquired new insurance protection. The new protection came from Occidental. The

liability of Federal Reserve for the respective sums specified in its policies was not continued after the adjudication of insolvency and the appointment of a receiver, either by decree of the court or the reinsurance agreement. The policies were in effect after the reinsurance contract became operative for the sole purpose of determining, in conjunction with the contract, the liability of Occidental, not continuing liability of Federal Reserve for which the securities were confessedly deposited. There was a novation in which Occidental was substituted for Federal Reserve in point of liability with certain changes which were made with the consent of the policyholders. * * * The right of such holders to participate pro rata in the assets in receivership could not be taken from them without their consent. * * * But no effort was made to do that. Instead, the court expressly preserved to each of them the right to file a claim and thus receive his aliquot interest in such assets; and the transfer to Occidental was subject to that right."

Hobbs v. Occidental Life Ins. Co., 87 Fed. (2d) 380.

The reinsurance agreement entered into between the Michigan liquidator and the American United, recognizing the existence of a controversy as to the application of the reserve involved in the Iowa deposit, provided by Section 36 (R. 338-340) that all of the terms of the reinsurance agreement would apply to all of the policyholders included in the Des Moines Group, and that at the termination of any litigation by which their rights would be finally settled, the reinsurance agreement would then be submitted to the Michigan Court by the Michigan Receiver, under the reserved authority in that Court, for revision in accordance with the determination of the court by which the contro-

versy was settled. In the meantime, policyholders of the Des Moines Group share all benefits otherwise granted by the reinsurance agreement, and any change in the application of the Iowa deposit by which the original policyholders of the Iowa Company will be preferred as over all policyholders of the Michigan Company will be granted to them when the matter is finally determined. The Michigan Court is open to them and it is significant that no attempt has been made by any policyholders in that Court to secure such preference as has been sought by Petitioner ostensibly for the benefit of policyholders. There is no limitation in the contract of reinsurance upon the rights of the Iowa policyholders by which the novation under which they have now become policyholders of the American United can be considered upon any different basis than all other policyholders. Their rights have in no sense been changed (R. 338).

As a result of the original reinsurance of the Iowa Company by the Michigan Company and the subsequent reinsurance of the Michigan Company by the American United, the policyholders whose policies were originally issued by the Iowa Company have now become policyholders of the American United and look only to the American United for any insurance protection. The Iowa Company is no longer in existence nor is the Michigan Company and only the American United is available to protect them. Whether the application of the assets now in the Iowa deposit will be held to apply only to the Iowa policyholders, or to all policyholders of the Michigan Company upon a basis of equality, can be settled in the Michigan Court. If a preferential treatment is to be granted to certain policyholders, the reinsurance agreement has provided a means

of recognizing such treatment under the supervision of the court of primary jurisdiction (R. 340).

Petitioner in seeking the right to administer such deposit does not speak for residents of Iowa alone but as pointed out by the Circuit Court of Appeals (R. 496) seeks to speak for 4,313 policyholders, being 1,535 policyholders in Iowa (about 37% of the total number) and others in 41 different states and several foreign countries. Moreover, of those for whom he seeks to speak, all with the exception of 81 have accepted the reinsurance of the Michigan Company by the American United and those 81 accepted the jurisdiction of the Michigan Court by filing dissents with the Michigan Receiver for submission to the Michigan Court (R. 199).

If Petitioner sought to represent Iowa residents only, in addition to those 1,535 Iowa survivors of the original policyholders in the Iowa Company, at the time of the insolvency of the Michigan Company in 1938 there were also 1,707 policyholders, residents of Iowa, who originated in the Michigan Company and held \$2,315,543.70 insurance in force (R. 384).

It may be properly assumed that in some instances the same individual holds a policy issued by the Iowa Company prior to its reinsurance in 1921 and a policy issued by the Michigan Company soon thereafter. Both policies are reinsured by the American United. The policyholder has accepted the reinsurance, yet Petitioner seeks to control one policy, though the policyholder has accepted reinsurance of both. Such is an example of "the confusion and irregularity" growing out of such an attempt to interfere with the orderly disposition of the affairs of an insolvent life insurance company. The widespread geographical opera-

tion of a life insurance company, the long term basis of its accounting, the number of individuals involved and the purpose of continued protection all demonstrate the necessity of unified control as has been represented by the decisions.

The Iowa deposit was based upon reserves, as determined by valuation each year of the policies in force, thereby representing an amount increasing from year to year as a result of the payment of premiums to the Michigan Company from August, 1921, and to the American United thereafter. The only sum, therefore, now available to a policyholder as represented by his policy issued by the Iowa Company, would be his pro rata portion of the total deposit made over the course of the years. *Carr v. Hamilton*, 129 U. S. 252, 256; 32 L. Ed. 669, 670.

Something more than an "inchoate lien" is necessary to establish a right in any policyholder as against a deposit even if established for the benefit of policyholders within a particular state. Petitioner throughout his brief reiterates a claim that he proceeds on behalf of *lien* holders. The record discloses, however, no judgment creditors for whom he speaks, no attachment creditors and no general creditors; only policyholders are under consideration and a pertinent inquiry is whether the policyholders included in the Iowa group either have or claim to have any interest in the Iowa deposit for the protection of which they have sought the assistance of Petitioner or, on the other hand, whether any obligation exists in Petitioner (with or without the request of those policyholders) to seek to protect their alleged interests, if any they may have.

In no instance does Petitioner claim, nor does the record disclose any act on the part of a single policyholder of the original Iowa Company group from which it would

appear that they now look to Petitioner to protect any interest in the Iowa deposit which such policyholders might have, nor is there a single instance of a claim made by a single original policyholder of the Iowa Company group which has ripened into judgment or in support of which he has sought protection by attachment. Only approximately 37% of all insurance now in force which originated in the Iowa Company belongs to residents of the State of Iowa (R. 198). It is, therefore, a timely inquiry to consider what Petitioner, if successful in securing for himself the right separately to administer the Iowa assets, would or could do with those assets.

By stipulation it is agreed that the present value of the assets has diminished by approximately 25% from the face value (R. 199). The total amount of the Iowa assets is now less than the reserve required to support the entire group of policyholders. A pro rata distribution to each policyholder would mean that after paying premiums for a period of more than 20 years in every case (much longer in many cases) the insured would receive but a comparatively small sum of money at a time when new insurance, if procurable at all, would be at a cost far beyond the reach of most applicants. The average age of the Iowa policyholders is over 60 years (R. 380). If Petitioner would seek to use the amount of reserves to purchase reinsurance for this comparatively small part of the Michigan Company policyholders an answer to that proposal may be found in the fact that a contract of reinsurance covering all of the insurance of the Michigan Company (including the Iowa policyholders) has, for a period of more than two years, been in operation under the acceptance of practically all of the present policyholders originally in the Iowa Company, and with the approval of the Court having

original jurisdiction of the receivership of the Michigan Company, the Permanent Liquidating Receiver in Michigan, and the Commissioner of Insurance of the State of Indiana (R. 314, 340-341).

Moreover, if Petitioner seeks to liquidate the assets represented by the Iowa Deposit to secure cash, of the total mortgage loans in the amount of \$2,376,600.86 only one mortgage represents a loan upon land in the State of Iowa within the jurisdiction of Petitioner. No contracts of sale (totalling \$134,301.21) are represented by Iowa properties. Mortgages on Michigan land number 49 and total \$1,210,688.01 (R. 342). Petitioner, therefore, would have to go to the jurisdiction of the Permanent Liquidating Receiver to sue on more than half the mortgages he seeks to control, and in his own state could sue upon only one.

It would appear, therefore, that from a strictly practical view Petitioner would be unable to liquidate the assets which he seeks to control except by extensive operations in practically every other state but his own, and if he sought a pro rata distribution of the Iowa deposit to the policyholders he would inflict upon them incalculable harm; if he endeavored to reinsure the limited amount of their policies he could do no more (albeit that he might do it differently or upon a somewhat different basis) than that which has already been done in an efficient, economical and orderly manner with the approval not only of the Iowa policyholders and of the Permanent Liquidating Receiver charged with the duty of protecting the interests of all the policyholders of the insolvent Michigan company but also of the Court having domiciliary jurisdiction of the liquidation of the Michigan Company.

The liquidation of an insolvent insurance company necessarily involves a reduction in value of reserves as a result of which a lien must be established against such reserves. Protection in the course of liquidation to the policyholders is to be found only in such administration of the assets of the insolvent that the lien may be reduced as rapidly as possible and the value of the policies re-established. Also mortality savings and the supervision and control of such reinsured business as a "going concern" will make possible savings and hence benefits which would be lost if an attempt is to be made sometime in the future to bring about a reinsurance of the Iowa business by the Petitioner after obtaining control of the assets. In recognition of the desirability of administration by a single instrumentality, the courts have uniformly recognized the primary right in the domiciliary Receiver to supervise litigation, including reinsuring the business of the insolvent Company, subject to the claims of judgment or attachment creditors. The desirability of a single administration of an insolvent insurance company rather than submitting such liquidation to the jurisdiction of various courts working at cross purposes undoubtedly was the basis of the reasoning of the Circuit Court of Appeals in determining that the decree of the court below constituted an interference with the orderly administration of the property and business of the Michigan Company and impaired the jurisdiction of the Michigan Court in directing and supervising such administration (R. 501). In the absence of any showing of judgment or attachment liens by which equality of distribution should be destroyed, it is submitted that upon every practical viewpoint the attempt of Petitioner involves great harm to the policyholders, the creation of expense which necessarily further reduces the value of the assets

and a complete failure to recognize the value of "a single management under the supervision of one court."

IV

THE IOWA FEDERAL COURT WAS WITHOUT JURISDICTION TO INTERFERE WITH THE ECONOMICAL, EFFICIENT AND ORDERLY LIQUIDATION OF AN INSOLVENT MICHIGAN INSURANCE COMPANY BY A MICHIGAN COURT.

The Michigan Court by virtue of Michigan law had acquired jurisdiction of all the assets of the Michigan Company by the filing of the statutory proceeding by the Commissioner of Insurance. The statutory liquidator thereafter acquired complete title of all the assets of the insolvent Michigan Company wherever located. The statutes by which the receiver was appointed in Michigan make it definite and plain that he was the statutory successor of the corporation and not a mere equity receiver. As stated of such a receiver in *Clark v. Williard* (292 U. S. 112, 121; 78 L. Ed. 1160, 1166), "His title is the consequence of a succession established for the corporation by the law of its creation." The Supreme Court held in *Clark v. Williard*, that the Supreme Court of Montana had denied full faith and credit to the statutes and judicial proceedings of Iowa in holding that the receiver appointed in Iowa derived title through a judicial proceeding and not through the charter of the corporation. In the instant case no question can arise under the Michigan law as to the status of the receiver as the successor to the Michigan corporation.

The Supreme Court in the first case of *Clark v. Williard* determined that the case would have to go back to the state court in order that any priority of local claimants would

there be determined, in view of the fact that the Supreme Court of Montana had not decided in the case then brought to the United States Supreme Court whether there was a local policy expressed in statutes or decisions of Montana whereby judgments and attachments had a preference over the title of a charter liquidator. The instruction to the Court below therefore was as follows: "The Supreme Court of Montana will determine whether there is any local policy whereby an insolvent foreign corporation in the hands of a liquidator with title must submit to the sacrifice of its assets or to their unequal distribution by writs of execution." (*Clark v. Willard*, 292 U. S. 112, 129; 78 L. Ed. 1160.)

When the Supreme Court of Montana had decided that the local policy of the State permitted attachments and executions against insolvent corporations, foreign and domestic, and that the rule prevailed against a statutory successor clothed with title to the assets of the corporation, upon the second appeal to the United States Supreme Court, the standing and ownership of the assets of the corporation by the receiver were conceded but it was held that upon such ownership was imposed the lien of judgments and executions in conformity with local law so that a local creditor was given a "free hand, with the result that he may seize what he can find, though the assets of the debtor are dismembered in the process." (*Clark v. Willard*, 294 U. S. 211, 216; 79 L. Ed. 865, 868.)

The title of the statutory liquidator of the insolvent Michigan Company to the assets of the Michigan Company cannot be questioned in the instant case. Full faith and credit must be given by the Iowa courts to the holding of the Michigan Court in accepting jurisdiction and in

appointing a receiver. The question, as stated in the language of *Clark v. Williard*, is whether by statutes or decision in the State of Iowa there is a local policy which would "allow the assets of an insolvent corporation to be torn to pieces at the suit of rival creditors when they could be distributed equally and without sacrifice at the hands of a receiver." Mr. Justice Cardozo stated of such a doctrine that "the drastic consequences of acceptance attest the need of caution," and after pointing out that business corporations have the benefit of equal distribution under involuntary proceedings or bankruptcy added: "But insurance corporations, like banks, are excluded from bankruptcy altogether (U. S. C. Title 11, Section 22b), and must submit to dismemberment, however great the waste or inequality, unless receivers are appointed." (*Clark v. Williard*, 292 U. S. 112, 123; 78 L. Ed. 1160, 1167.)

In support of the contention that Iowa does recognize the doctrine of local preferences rather than equality of distribution reliance is placed upon the case of *Shloss v. Metropolitan Surety Company*, 149 Iowa 382, 128 N. W. 384, as establishing the law and policy of the State of Iowa. This case dealt with the insolvency of a *surety* company of the State of New York which had assets in the State of Iowa. Those assets had been seized in an attachment proceeding. The question in the case as stated by the Supreme Court of Iowa was as to the rights of creditors in Iowa "to attach the funds of a foreign insolvent corporation for the purpose of enforcing payment notwithstanding the receivership in the state of the corporation's home * * *." (*Shloss v. Metropolitan Surety Company*, 149 Iowa 382, 128 N. W. 384.) By reason of the fact that this was an attachment proceeding the Iowa Court refused to follow the doctrine of equality of dis-

tribution by the domiciliary receiver set out in *Relfe v. Rundle* as having no direct application to the matter under discussion.

In the instant case we are dealing with no attachment creditor as in the *Shloss* case or judgment and execution creditors as in *Clark v. Williard*, nor is there any other basis of a lien beyond the mere suggestion that a lien exists by reason of the fact that a deposit, made and continued without requirement of Iowa law, was in the possession of petitioner when a statutory liquidator was appointed in the state of the corporation's domicile.

It is the contention of the Respondent American United that there is no showing of local policy or decision in Iowa by which the power of the Permanent Liquidating Receiver to administer all of the assets of the insolvent Michigan Company is in any degree changed or reduced.

CONCLUSION

The Respondent, American United, respectfully submits that the decision of the Circuit Court of Appeals of the 8th Circuit was correct in holding that there was no jurisdiction in the United States District Court by which that Court was empowered to interfere with the orderly distribution of the assets of an insolvent insurance company by a statutory liquidator. In the event that it be held that the Federal Court had jurisdiction, in full recognition of the seriousness of the questions and the many persons whose interests are involved in the matters at issue, the Respondent, American United, would welcome an expression by this Honorable Court and respectfully urges a reaffirmation of the principles already expressed in the leading cases of *Relfe v. Rundle* and *Clark v. Willard* by which the efficient, economical and orderly liquidation of assets of an insolvent insurance company may be assured without the intervention of attempted liquidation in conflict with the established orderly processes undertaken by a statutory liquidator under the supervision of a court of primary jurisdiction.

Respectfully submitted,

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